

Part 6  
**ADMINISTRATION**

**§ 300-601 Enforcement; violations and penalties.**

**[Amended 1-19-1993 by Ord. No. 707; 3-1-1993 by Ord. No. 41; 5-16-1994 by Ord. No. 494; 3-20-1995 by Ord. No. 40]**

(Green is shared with MDEP Ordinance. Blue underlines are additions and blue strikeouts are removals.)

A. Enforcement. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter.

- (1) If the Code Enforcement Officer shall find that any provision of this chapter is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
- (2) The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this chapter.
- (3) Before issuing a certificate of occupancy, the Code Enforcement Officer may require the applicant to submit a performance bond running to the City or certified check payable to the City, in an amount and form acceptable to the Director of Finance, with the advice and consent of the Code Enforcement Officer and the Corporation Counsel. The performance bond or certified check must equal at least the total cost of furnishing, installing and completing all permit approval items as required by the Code Enforcement Officer at the time of issuing the certificate of occupancy. The surety shall not expire without written approval of the Director of Finance.
- (4) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.
- (5) On an annual basis, a summary of the records listed in Subsection A(3) of this section affecting shoreland areas shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.
- (6) With respect to flood damage prevention requirements and in addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance

Administration requesting a denial of flood insurance. The valid declaration shall consist of:

- (a) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  - (b) A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
  - (c) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  - (d) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
  - (e) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.<sup>[1]</sup>
- (7) Subdivisions. The Director of Code Enforcement or his designee may issue a cease work order on any subdivision or major development in which the subdivider, developer or his contractor is violating the terms of the subdivision approval. Such order may be issued only after counsel with the City Engineer. The cease work order shall apply until violations are sufficiently corrected. Work done after issuance of a cease work order shall be considered a violation of this chapter and subject to the fines of this chapter.
- (8) Actions or failure to act by the Code Enforcement Officer pursuant to Subsection A of this section are not appealable to the Board of Appeals.

B. Legal actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by the authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. Actions or failure to act by the municipal officers pursuant to this section are not appealable to the Board of Appeals.

C. Penalty.

- (1) Any person, firm, or corporation, including a landowner's agent or a contractor, who

orders or conducts any activity in violation of any of the provisions of this chapter or who fails to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances or conditional uses, shall, upon conviction thereof, be penalized in accordance with 30-A M.R.S.A. § 4452. As of the effective date of this chapter, such penalties include fines of not less than \$100 nor more than \$2,500 per violation. Each day such violation continues shall constitute a separate offense. However, in a Resource Protection District the maximum penalty is increased to \$5,000 (38 M.R.S.A. section 4452).

- (2) The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, or maintains such violation, may each be found guilty of a separate offense and suffer the penalties herein provided.
  - (3) With respect to flood damage prevention regulations, the penalties contained in 30-A M.R.S.A. § 4452 shall apply to any violation of this chapter.
  - (4) With respect to the subdivision regulations, any person who conveys or offers or agrees to convey any land by reference to a subdivision plan which has not been approved as required by this chapter and recorded by the proper Register of Deeds, shall be subject to by a civil penalty of not more than \$1,000 for each lot conveyed or offered or agreed to be conveyed, except that nothing herein contained shall be deemed to bar any legal or equitable action to restrain or enjoin any act in violation of these regulations.
- D. Permit required; general. The Code Enforcement Officer shall review and approve, approve with condition or deny applications for permits in accordance with this chapter. The Code Enforcement Officer shall inform applicants as to the need for a conditional use permit by the Planning Board as outlined in § 300-603A. In accordance with § 300-606B, the Board of Appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer or Planning Board.
- (1) Building permit plans required.
    - (a) Where specifically permitted "by right," no building permit is needed.
    - (b) No structure and/or parking lot shall be erected, enlarged, moved or improved without a permit from the Code Enforcement Officer. No permit shall be issued except in conformity with the provisions of this chapter. An administrative fee of \$5 will be charged for each permit application, in addition to building permit fees.
    - (c) No earth filling resulting in a net increase of 25 cubic yards of material or more in any one year shall be done without a permit from the Code Enforcement Officer. A one-time administration fee of \$5 will be charged for each permit application.

- (d) The Code Enforcement Officer may institute a permit by rule process for accessory buildings.
- (2) Special fees. The City Council shall set fees for conditional uses, appeals and variances, appeals from Planning Board decisions, rezonings, subdivisions, flood hazard development permits and major developments, which fees shall be adjusted from time to time. Said fee schedule shall be filed with the City Clerk.
  - (a) Said fees will be collected at the time the applicant files, and the fees are nonrefundable.
  - (b) An additional fee may be charged if the Code Enforcement Officer, City Planner, City Engineer, Board of Appeals and/or Planning Board needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of this chapter and be grounds for the issuance of a stop-work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.
- (3) Application for permit; plans required:
  - (a) Site plan required. All applications for permits shall be accompanied by a site plan of suitable scale showing:
    - [1] The actual shape, size, and location of the lot to be built upon and the names of the landowner of record as well as the names of the abutting property owners;
    - [2] A survey prepared by a Maine registered land surveyor and tied to the Maine Coordinate System (as outlined in § 3.2.6 of the City of Augusta Technical Standards Handbook) shall be required by the Code Enforcement Officer for all nonresidential uses with a proposed floor area in excess of 10,000 square feet;
    - [3] The size (specific dimensions), the shape, height, and location (with setbacks noted) of any buildings to be erected, altered, or removed from the lot;
    - [4] The location of street entrances to, exits from and driveways on the premises;
    - [5] The location, size, and site design, construction, and traffic service arrangement of existing or proposed off-street parking and loading areas;
    - [6] Abutting rights-of-way and right-of-way widths;

- [7] Show how applicable performance standards will be met;
  - [8] The proposed location, size (design, lighting, and display characteristics) of all signs;
  - [9] The location of existing and/or proposed sewage disposal facilities;
  - [10] The location of existing and/or proposed water supply facilities; and
  - [11] Any areas to be cut and filled.
- (b) The application shall include any other information is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. The issuance or refusal of a permit shall be made within 10 working days of the submission of a complete application to the Code Enforcement Officer. In shoreland areas, no permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a permit for such facilities has first been secured by the applicant from the licensed plumbing inspector, according to the requirements of this chapter and state law.
- (c) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (d) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the licensed plumbing inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.
- (e) Right, title or interest. The Planning Board shall consider an application only when an applicant has demonstrated sufficient right, title or interest in all of the property which is proposed for development or use. An applicant shall demonstrate in writing sufficient right, title or interest, as follows:
- [1] When the applicant claims ownership of the property, a copy of the deed(s) to the property shall be submitted.
  - [2] When the applicant has an option, purchase-sale agreement or other contractual agreement for the acquisition of the property, a copy of such agreement(s) shall be submitted. Such agreements shall contain terms to establish future title.
  - [3] When the applicant has a lease on the property, a copy of the lease shall be submitted. The lease shall be of sufficient duration to permit construction and reasonable use of the development.

- (4) If no substantial progress of construction has been made within six months of the date of the permit, the permit shall become invalid.

**§ 300-604 Special exception uses.**

**[Added 12-3-2001 by Ord. Nos. 141-A, 141-B, 141-C]**

**A. General.**

- (1) The Planning Board is hereby authorized to hear and decide, in accordance with Chapter **14**, Article **II**, of the Code of the City of Augusta, as amended, upon applications for special exception uses. The Planning Board shall hear and approve, approve with modifications or conditions (see Subsection **D** of this section), or disapprove all applications for special exception uses. Special exception uses are typically commercial land uses and developments that could support or enhance the purposes of a predominantly residential zoning district with adherence to reasonably high design standards.
- (2) A 2/3 majority of the minimum meeting quorum of the Planning Board shall be required to approve a special exception use permit. No special exception use permit shall be authorized unless specific provision for such special exception use is made in this chapter. A person informed by the Code Enforcement Officer that he requires a special exception use permit shall file an application for the permit with the Planning Board.

**B. Public hearing.** Following the filing of a complete application for a special exception use review, and before taking action on the application, the Planning Board shall hold a public hearing on the proposed project at its next monthly meeting, providing the application is determined to be complete by the City Planner or the Planning Board Chairman at a date not later than the application deadline for said meeting. The Planning Board shall provide notice of a public hearing on the application, in the form and manner and to the persons specified herein.

- (1) The notice shall include the time and place of such hearing, which shall be within 30 days of such application, the nature of the matter to be heard, the address or location of the property involved. Where notice by mail is required, it shall be mailed at least 10 days in advance of the hearing date by regular United States mail.
- (2) Notices shall be given to each of the following:
  - (a) To the applicant, City Council, Planning Board and Board of Zoning Appeals.
  - (b) To all residents of the City, by publication in a newspaper of general circulation in the City at least 10 days before the hearing, and by posting a sign on the portion of the property involved that is nearest the public road.
  - (c) To the owners of the properties within 500 feet of the parcel involved if the parcel is located in the Urban Growth Area Districts or within 1,000 feet of the parcel involved if the parcel is located in the Planned Development and/or Rural

Districts by regular United States mail.

- (d) For the purposes of this section, the owners of property shall be considered to be the parties listed by the Assessor's office of the City of Augusta as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action by the Planning Board.
- (e) The applicant's case shall be heard first. The applicant shall be allowed to directly cross-examine witnesses. To maintain order by procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.

C. Site plan review criteria applicable to special exception uses.

- (1) Design review requirements. Does project meet the design standards of § **300-605C** of this chapter?
- (2) Project design impact upon purposes of district. Does the project support/advance the purposes of the zoning district(s) that it is part of?
- (3) Special exception use criteria. Does the project meet all the criteria for conditional uses identified in § **300-603E** of this chapter?

D. Conditions attached to special exception uses. Upon consideration of the criteria listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this chapter, that it finds necessary to further the purposes of this chapter. Violation of any of these conditions shall be a violation of this chapter. Such conditions may include, but are not limited to, specifications for type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational controls (including noise and odor control); professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of facilities; type of construction; or any other conditions necessary to fulfill the purposes of this chapter.

E. Special exception use decision.

- (1) A finding by a minimum of 2/3 majority of the minimum meeting quorum of the Planning Board that the project satisfactorily meets all the applicable review criteria identified in Subsection C above shall be required to approve the application. All decisions of the Planning Board shall be accompanied by a written statement that sets forth the precise reasons why the findings were made. Once a decision is made, the Planning Board shall inform, in writing, the applicant and the Code Enforcement Officer of its decision and its reasons therefor. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Planning Board, or deny a special exception use permit.

- (2) Within 30 days of the public hearing, the Planning Board shall approve, deny, or approve with conditions all applications for a special exception use permit if it makes a positive finding based on each of the following applicable criteria. The applicant shall have the burden of proving that his/her application is in compliance with the requirements of this chapter.
- F. Effective date of approval. All projects approved by the Planning Board in accordance with this section shall be commenced within two years of the date of the Planning Board decision and shall be substantially completed within five years of the date of the Planning Board decision unless a permit extension has been granted by the Board.

**§ 300-606 Appeals.**

- A. Establishment of Board of Appeals. There is hereby established a Board to be known as the "Board of Zoning Appeals," which Board's duties shall include, but not be limited to, hearing appeals under this chapter.
- (1) Compliance with state law. The Board of Zoning Appeals shall comply with the provisions of 30-A M.R.S.A. § 2691 and 30-A M.R.S.A. § 4353, as amended.
  - (2) Membership. The Board of Zoning Appeals shall consist of seven members and two associate members, all of whom shall be residents of the City of Augusta. Neither a municipal officer nor a spouse of a municipal officer may be a member or associate member of the Board. All members shall serve without pay.
  - (3) Municipal officers to appoint members. All members of the Board of Zoning Appeals, including associate members, shall be appointed by the Mayor and confirmed by the City Council.
  - (4) Members' terms. The initial appointed members shall hold office, two for one year, two for two years and three for three years. Thereafter, the appointments shall be for a term of three years. Associate members shall be appointed for three-year terms. The municipal officers may dismiss a member of the Board for cause before the member's term expires.
  - (5) Vacancies. When a member of the Board of Zoning Appeals is unable to act because of conflict of interest, physical incapacity, absence, or any other reason satisfactory to the Chairman, one or both associate members are hereby empowered to act in place of the regular member or members who are unable to act. When there is a permanent vacancy, the senior associate member shall automatically assume the position created by the vacancy and shall serve for the unexpired term of said position without the necessity of being specifically appointed or sworn to said position. The Mayor shall thereafter appoint a new associate member for a three-year term. The appointment shall be confirmed by the City Council.
  - (6) Quorum and voting requirements.
    - (a) The presence of four or more Board of Zoning Appeals members shall



constitute a quorum, and associate members in attendance may be included in determining the existence of a quorum. When a member of the Board is unable to act because of a conflict of interest, physical incapacity, absence or any other reason satisfactory to the Chair, one or both associate members shall be empowered by the Chair to act in place of the regular member or members who are unable to act. Only members and associates authorized to vote are permitted to make and second motions. No meeting of the Board of Zoning Appeals shall be held without a quorum as established in this section. The Board of Zoning Appeals shall act by majority vote, calculated as follows:

Authorized Voters	Majority (votes needed to pass motion)
4	3
5	3
6	4
7	4

- (b) A Board member may abstain from voting. If a member wishes to abstain, he or she shall so declare prior to discussion on the matter. An exception can be made by the Chair if it is determined during deliberations that a member has a conflict of interest. If and when this occurs, the member must then abstain. Once a member has abstained, he or she shall not be counted as an authorized voter.
- (7) Meetings; officers. The Board of Zoning Appeals shall have regular monthly meetings and have such other special meetings as shall be called by the Chairperson or by a written petition by four or more members of the Board. The Board shall have a Chairperson and Secretary and such other officers as it may determine by vote.
- (8) Regulations, bylaws. The Board shall have the power to adopt all necessary regulations and bylaws to regulate its own activities. Such regulations and bylaws shall be filed with the City Clerk.

B. Powers and duties of the Board of Appeals. The Board of Appeals shall have the following powers and duties: [Amended 1-21-1992 by Ord. No. 303; 3-1-1993 by Ord. No. 41; 12-19-1994 by Ord. No. 685; 3-20-1995 by Ord. No. 40; 6-4-2007 by Ord. No. 109; 6-16-2011 by Ord. No. 11-71]

- (1) Administrative appeals. To hear and decide appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement administration of this chapter; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement or decision or determination made by, or failure to act by, the Code Enforcement officer in his or her review of and action on a permit application under this chapter. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this chapter is not appealable to the Board of Appeals. or to effect any variation in the

application of this chapter from its stated terms. Actions or failure to act by the Code Enforcement Officer or the municipal officers in the enforcement of this chapter pursuant to § **300-601A** shall not be appealable to the Board of Appeals. The Board may modify or reverse any ruling or decision of the Planning Board or Code Enforcement Officer if the Board finds that such ruling or decision is contrary to the specific provisions of this chapter. The Board is authorized to hear and decide appeals where it is alleged that due process, as outlined in this chapter and, in the case of appeals of Planning Board decisions, as outlined in Chapter **14**, Article **II**, of the Code of the City of Augusta, has been violated. In regard to allegations that specific findings of fact are in error, the Board of Appeals is empowered to modify or reverse a Planning Board finding only if such finding is found to be clearly erroneous.

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(4)

- (2) Variances; conditions governing applications; procedures. To hear and decide upon appeal in specific cases in variance from the strict requirements of this chapter where, owing to special conditions or circumstances affecting a particular parcel of land or building or structure thereon which are not applicable to other lands, buildings, or structures in the same district, as in the case of exceptionally irregular, narrow, or steep lots or other physical conditions, a literal enforcement of the terms of this chapter would result in undue hardship. As used in this chapter, a variance is authorized only for dimensional requirements, including but not limited to lot width, structure height, percent lot coverage, setbacks, sign size, buffer yard width. A variance may not be granted to permit a use that is not provided for as a permitted use or a conditional use. The Board of Appeals shall not grant a variance from the terms of this chapter in respect to such land or structures unless and until:

- (a) A written application for a variance is filed with the Board demonstrating:

- [1] That well-documented, exceptional conditions affect the particular land or building which do not generally affect other property in the district.

[2] That such conditions do in fact constitute an undue hardship to the owner of such land or building. The term "undue hardship" shall mean:

- [a] That the land in question cannot yield a reasonable return unless a variance is granted;
- [b] That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- [c] That the granting of a variance will not alter the essential character of the locality; and
- [d] That the hardship is not the result of action taken by the applicant or prior owner.

[3] That a variance from the particular terms of this chapter can be granted without detriment to the public interest or the health, safety, or general welfare of the residents of the municipality, and without impairment of the integrity of the Comprehensive Plan for municipal development, or of the purpose and intent of this chapter.

(b) Notwithstanding § 300-606B(2)(a)(2) above, the Board of Appeals, or the codes enforcement officer if authorized in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to § 300-606B(2)(d) and § 300-606H(4).

(b)(c) Limit on variances. No variance shall be granted for placement of a structure less than five feet from the property line unless the abutting owner gives a construction, maintenance and repair easement which shall be recorded with the Kennebec County Registry of Deeds. No variance shall be granted which does not provide for a snow storage area of a minimum of five feet from the right-of-way line. In shoreland areas, the minimum setback from the normal high-water mark for subsurface sewage disposal facilities shall not be reduced by variance. In shoreland areas, the Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party

receiving the variance shall comply with any conditions imposed.

~~(e)~~(d) A copy of each variance request in shoreland areas, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals. All ~~all~~ variances granted by the Board of Appeals in shoreland areas shall be sent by the Code Enforcement Officer to the Department of Environmental Protection within 14 days of the decision.

C. Appeals and variances.

- (1) The Board of Appeals of the City of Augusta may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this chapter.
- (2) The Board of Appeals may grant a variance from the requirements of this chapter consistent with state law and the following criteria:
  - (a) Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
  - (b) Variances shall be granted only upon:
    - [1] A showing of good and sufficient cause; and
    - [2] A determination that, should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and
    - [3] A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and
    - [4] A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
      - [a] That the land in question cannot yield a reasonable return unless a variance is granted; and
      - [b] That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and

[c] That the granting of a variance will not alter the essential character of the locality; and

[d] That the hardship is not the result of action taken by the applicant or a prior owner.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.

(d) Variances may be issued for new floodplain construction, substantial improvements, or other development for the conduct of a functionally dependent use, provided that:

[1] Other criteria of this Subsection C and § 300-508E(11) are met; and

[2] The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(e) Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of historic structures upon the determination that:

[1] The development meets the criteria of Subsection C(2)(a) through (d) above; and

[2] The proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(f) Any applicant who meets the criteria of Subsection C(2)(a) through (e) shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

[1] The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;

[2] Such construction below the base flood level increases risks to life and property; and

[3] The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the

municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

(g) Appeal procedure for administrative and variance appeals.

- [1] An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the planning Board, except for enforcement-related matters as described in § 300-606B(1) above. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the 30 day requirement. after receipt of a written decision of the Code Enforcement Officer or Planning Board.
- [2] Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- [3] The Board of Appeals shall hold a public hearing on the appeal within 35 days of its receipt of an appeal request.
- [4] The person filing the appeal shall have the burden of proof.
- [5] The Board of Appeals shall decide all appeals within 35 days after the close of the hearing and shall issue a written decision on all appeals.
- [6] The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a flood hazard development permit, which includes any conditions to be attached to said permit.
- [7] Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within 45 days from the date of any decision of the Board of Appeals.

D. Burden of proof. In any proceeding before the Board of Appeals, the burden of proof shall be upon the applicant to establish the application/use is in compliance with the requirements of this chapter.

E. Board of Appeals may impose conditions. In granting appeals, the Board may impose such conditions and safeguards regarding the location, character, fencing, screening, landscaping, or other features as it may deem advisable in furtherance of the intent and purpose of this chapter and may require posting of bonds to assure performance. The issuance of any variance shall be contingent upon the applicant's agreeing in writing to indemnify and save harmless the City against all loss, cost, damage or expense occurring by reason of the erection or maintenance of a structure and upon his or her filing with the

City Clerk a certificate of public liability insurance covering property damage up to \$1,000 and bodily damage with a coverage of \$10,000 to \$20,000 minimum limits.

F. Filing of appeals. [Amended 6-4-2007 by Ord. No. 109]

- (1) In all cases, a person aggrieved by any decision of the Code Enforcement Officer or Planning Board shall commence his or her appeal within 30 calendar days after the date the official written decision is signed by the Code Enforcement Officer or Planning Board Chair. If the 30th day falls on a nonbusiness day for the City, the final date for filing an appeal shall be the end of the next business day for the City.
- (2) Applications for appeals shall be made ~~Such appeal shall be commenced by~~ filing with the Board of Appeals a written notice of appeal, which includes:
  - (a) A concise written statement indicating what relief is ~~required~~/requested and why the appeal or variance ~~it~~ should be granted.
  - (b) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (3) Upon receiving an application for an administrative appeal or variance, being notified of an appeal from a decision of a Code Enforcement Officer, the Code Enforcement Officer or Planning Board, as appropriate shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from. Upon being notified of an appeal from a decision of the Planning Board, City planning staff shall have prepared and transmitted to the Board of Appeals a written certified transcript of the Planning Board proceedings from which an appeal is being taken.

G. Public hearing. Before making any decisions or taking action on any appeal, the Board of Appeals shall hold a public hearing on any administrative appeal or a request for a variance, within 35 days of its receipt of a complete written application, unless this time period is extended by the parties. ~~an appeal request, hold a public hearing.~~ The Board shall notify the appellant, the Code Enforcement Officer, the Planning Board, the municipal officers, the Kennebec Journal and owners of abutting property at least 10 days in advance of the hearing specifying the nature of the appeal and the time and place of the hearing.

- (1) Whenever an appeal is filed of a decision made by the Planning Board where abutters were notified, all abutters initially notified shall be notified of the upcoming appeal.
- (2) In the case of appeals from decisions made by the Planning Board, the public hearing shall be limited to the certified transcript and record of the Planning Board proceedings; no new information shall be considered.
- (3) The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked only through the Chair. All persons at the hearing shall abide by the order of the Chair.

H. Appeal decision.



- (1) Within ~~35~~ 30 days of the public hearing, the Board of Appeals shall reach a decision and shall inform, in writing, the appellant, ~~and the Code Enforcement Officer, and if within the shoreland zone, the Department of Environmental Protection within 7 days of the Board's~~ ~~of its~~ decision and its reasons therefor. Upon notification of the decision of the Board of Appeals, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Board of Appeals, or deny a permit.
- (2) All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, and the appropriate order, relief or denial thereof.
- (3) All variances granted by the Board of Appeals but not recorded at the Registry of Deeds by the applicant within 90 days of granting shall be void.

I. ~~Appeal to Superior Court. Appeals from the Board of Appeals. Any~~ Except as provided for by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within ~~45~~ 30 days from the date of any decision of the Board of Appeals.

J. ~~Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the~~ The Board of Appeals may reconsider any ~~of its decisions~~ within 45 ~~30~~ days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.